

EVALUATION OF THE CERTIFICATE OF NEED APPLICATION SUBMITTED BY WEST TACOMA SURGERY CENTER PROPOSING TO ESTABLISH A FREE-STANDING AMBULATORY SURGERY CENTER IN TACOMA

PROJECT DESCRIPTION

This application proposes the sale of 50% interest in West Tacoma Surgery Center, an exempt ambulatory surgery center in Tacoma, to NeoSpine Surgery of Tacoma, LLC. Because West Tacoma Surgery Center is located within the offices of its owner, Dr. Joseph F. Jasper, and surgical privileges are limited to Dr. Jasper, it is not considered an ambulatory surgery center (ASC) under the provisions of Washington Administrative Code 246-310. If, however, ownership is shared with NeoSpine, LLC, West Tacoma Surgery Center will meet the definition of an ASC and will be required to obtain a Certificate of Need. The main entities of this proposal are West Tacoma Surgery Center, NeoSpine Surgery Center of Tacoma, NeoSpine Surgery, Advanced Pain Medicine Physicians, and Joseph F. Jasper, MD. Each entity's roles and responsibilities are outlined below.

Advanced Pain Medicine Physicians, PLLC, dba West Tacoma Surgery Center, LLC

Advanced Pain Medicine Physicians, PLLC, is a group surgical practice located in Tacoma, in Pierce County. The physician owner is Joseph F. Jasper, MD. Dr. Jasper operates the surgical center under an exemption from Certificate of Need issued in July, 1999. [source: Application, p4, and CN program records] Hereinafter, Advanced Pain Medicine Physicians will be referred to as "APMP." West Tacoma Surgery Center will be referred to as "WTSC."

NeoSpine Surgery, LLC

NeoSpine Surgery, LLC, is a company that was established in 2002 to "partner with accomplished spine surgeons to develop and manage Ambulatory Spine Surgery Centers, MRI Centers and Pain Management Centers as part of their practice." Headquartered in Nashville, Tennessee, as of April 2006, NeoSpine owned and/or operated ASCs in Colorado, Maryland, Tennessee, South Carolina and Washington. [source: April 24, 2006 screening responses, Exhibit 2, and NeoSpine website: www.neospine.com] Hereinafter, NeoSpine Surgery, LLC will be referred to as "NeoSpine."

NeoSpine Surgery Center of Tacoma, LLC

NeoSpine Surgery Center of Tacoma, LLC, was established specifically for this project. NeoSpine Surgery Center of Tacoma is wholly owned by NeoSpine Surgery, LLC and will, upon completion of the project, own 50% of West Tacoma Surgery Center. [source: Application, p2] Hereinafter, NeoSpine Surgery Center of Tacoma, LLC, will be referred to as "NeoSpine Tacoma."

This project under review is related to West Tacoma Surgery Center (WTSC), which has been in continuous operation since 1999. The current legal structure of WTSC qualified it for an exemption from Certificate of Need review as an ASC under Washington Administrative Code (WAC) 246-310-010. [source: CN historical files] WTSC has 2 operating rooms (ORs) and offers only interventional pain management procedures.

This project proposes to change the legal structure of WTSC by allowing an entity other than a physician associated with APMP to have ownership interest (NeoSpine Tacoma). This action by WTSC results in the facility becoming a freestanding ASC as defined in WAC 246-310-010. WTSC does not anticipate a change in the number of ORs at the facility or the types of procedures offered. In

addition to acquiring an ownership interest in WTSC, NeoSpine will operate the ASC under a management agreement.

Given that the ASC was established in 1999 the department did not require WTSC to identify the capital costs for its establishment at that time. For this project under review, the applicant identified the total capital expenditure to be \$1,050,000, which represents the fair market value for NeoSpine Tacoma's purchase of 50% of the business interest of WTSC. [source: Application, p42, and Exhibit 9]

APPLICABILITY OF CERTIFICATE OF NEED LAW

This project is subject to Certificate of Need review as the establishment of a new health care facility under the provisions of Revised Code of Washington (RCW) 70.38.105(4)(a) and Washington Administrative Code (WAC) 246-310-020(1)(a).

APPLICATION CHRONOLOGY

December 9, 2005	Letter of Intent Submitted
February 14, 2006	Application Submitted
February 14, 2006	Department's Pre-Review Activities
through April 24, 2006	<ul style="list-style-type: none">• Screening activities and responses
May 1, 2006	Department Begins Review of the Application
	<ul style="list-style-type: none">• public comments accepted throughout review
June 20, 2006	End of Public Comment
	<ul style="list-style-type: none">• Public Hearing conducted in Tacoma
August 21, 2006	Department's Anticipated Decision Date
August 22, 2006	Department's Actual Decision Date

AFFECTED PARTIES

Throughout the review of this project, two other entities sought and received interested person status under WAC 246-310-010:

- MultiCare Health System, an operator of acute care hospitals in Tacoma and medical clinics in Pierce and King counties
- Pacific Anesthesia, a medical group practice in Tacoma.

SOURCE INFORMATION REVIEWED

- West Tacoma Surgery Center, LLC's Certificate of Need Application dated February 14, 2006
- West Tacoma Surgery Center, LLC's supplemental information dated April 19, 2006, and May 4, 2006
- Historical charity care data obtained from the Department of Health's Office of Hospital and Patient Data Systems (2002, 2003 and 2004 summaries)
- Population data obtained from the Office Financial Management based on year 2000 census published January 2002.
- Licensing and/or survey data provided by the Department of Health's Office of Health Care Survey
- Data obtained from NeoSpine, LLC's website
- Data obtained from West Tacoma Surgery Center's website
- Quality of Care surveys for Washington and out-of state health care facilities owned, operated, or managed by NeoSpine, LLC.
- Certificate of Need Historical files

CRITERIA EVALUATION

To obtain Certificate of Need approval, the applicant must demonstrate compliance with the criteria found in WAC 246-310-210 (need); 246-310-220 (financial feasibility); 246-310-230 (structure and process of care); 246-310-240 (cost containment) and WAC 246-310-270 (ambulatory surgery).¹

CONCLUSION

For the reasons stated in this evaluation and agreement to the following terms and conditions, West Tacoma Surgery Center, LLC, is approved to establish an ambulatory surgery center in the city of Tacoma within Pierce County. The ambulatory surgery center is the existing facility currently owned and operated by Advanced Pain Management Physicians, PLLC, known as West Tacoma Surgery Center.

1. Prior to commencement/completion of the project, West Tacoma Surgery Center, LLC must provide to the department for review and approval a copy of the final admission policy for the ambulatory surgery center. The final admission policy must be consistent with the draft policy provided in the application.
2. Prior to commencement/completion of the project, West Tacoma Surgery Center, LLC must provide to the department for review and approval a copy of the final charity care policy for the ambulatory surgery center. The final charity care policy must be consistent with the draft policies provided in the application.
3. Prior to commencement/completion of the project, West Tacoma Surgery Center, LLC must provide to the department for review and approval an executed copy of the Asset Purchase Agreement, including any amended agreements, between West Tacoma Surgery Center and NeoSpine. The executed copy must be consistent with the draft agreement provided in the application.

Provided that the applicant agrees to the terms outlined above, a Certificate of Need would be issued with the following conditions.

1. West Tacoma Surgery Center, LLC will provide charity care in compliance with the charity care policies provided in its Certificate of Need application and the requirements of the applicable law. West Tacoma Surgery Center, LLC will use reasonable efforts to provide charity care in an amount comparable to the average amount of charity care provided by hospitals located in the Central Pierce planning area during the three most recent years. For historical years 2002-2004, these amounts are 0.85% of total revenue and 1.80% of adjusted revenue. West Tacoma Surgery Center, LLC will maintain records documenting the amount of charity care it provides and demonstrating its compliance with its charity care policies and applicable law and report by March 31 of each year the amount of charity care provided during the previous calendar year.

¹ Each criterion contains certain sub-criteria. The following sub-criteria are not relevant to this project: WAC 246-310-210(3), (4), (5), and (6) and WAC 246-310-240(2) and (3).

2. West Tacoma Surgery Center, LLC is limited to providing only those types of pain management services described within the application and relied upon by the department in this evaluation.

The approved capital expenditure associated with this project is \$1,050,000, which represents the fair market value for 50% of the business interest of the ASC based on documents provided in the application.

A. Need (WAC 246-310-210)

Based on the source information reviewed and subject to the terms and conditions on pages 3 and 4 of this evaluation, the department determines that the application is consistent with the applicable need criteria in WAC 246-310-210.

- (1) The population served or to be served has need for the project and other services and facilities of the type proposed are not or will not be sufficiently available or accessible to meet that need

The Department of Health's Certificate of Need Program uses the methodology found in WAC 246-310-270 determining the need for additional freestanding ASCs in Washington State. The methodology provides a basis of comparison of existing operating room (OR) capacity for both outpatient and inpatient OR's in planning areas using the current utilization of existing providers. The numeric portion of the methodology requires a calculation of annual capacity of existing ORs, both outpatient and inpatient, and excludes specialized dedicated rooms. Examples of 'dedicated' rooms are open heart surgery rooms, delivery rooms, cystoscopic rooms, and endoscopy rooms.

The methodology separates the state in to several planning areas, described variously as individual counties, groups of counties, or sub-areas of counties. The applicant is proposing to establish an ASC in Tacoma, which is located in the area described in the methodology as Central Pierce. The methodology provides a basis of comparison of existing capacity for both outpatient and inpatient OR's in the planning area using current utilization of existing providers.

The applicant provided its interpretation of the methodology contained in WAC 246-310-270. Relying upon utilization of existing CN-approved providers in the planning area, WTSC projected a surplus of 23.6 operating rooms in the planning area.

Given that WTSC is located in central Pierce County, the department also applied the methodology to that health service planning area. There are a total of 13 facilities with OR capacity either currently operating in the central Pierce planning area, or CN approved to be operating in the planning area. The 13 providers are listed below.

Central Pierce Planning Area Providers	
4 Hospitals / City	9 ASCs / City
MHS - Tacoma General/Allenmore, Tacoma	Cedar Laser and Surgery Center, Tacoma
MHS – Mary Bridge Children's Hospital, Tacoma	Gig Harbor ASC, Gig Harbor
FHS - St. Joseph Medical Center, Tacoma	Group Health-Tacoma Specialty ASU, Tacoma
FHS – St. Anthony Hospital, Gig Harbor	Narrows Eye Surgery Center, Tacoma
	Pacific Cataract & Laser Institute, Inc, Tacoma
	Pacific NW Eye Associates, Tacoma
	St. Marks Microsurgical Center, Tacoma
	Tacoma ASC, Tacoma
	West Tacoma Surgery Center, LLC, Tacoma

As shown above, the 13 facilities include four hospitals and nine ASCs. Of the four hospitals, three are currently operating—Tacoma General/Allenmore, Mary Bridge Children's Hospital, and St. Joseph Medical Center. The remaining hospital—St. Anthony Hospital, is CN approved, yet not operational. All four hospitals have OR capacity that will be counted for this project.

Of the nine ASCs, seven (one of which is the applicant) are located within a solo or group practice (considered an exempt ASC) and therefore, the use of these ASCs is restricted to physicians that are employees or members of the clinical practices that operate the facilities. These seven facilities do not meet the ASC definition within WAC 246-310-010 and should not be included in the capacity calculations of available ORs for the central Pierce County planning area.

The two remaining ASCs--Gig Harbor ASC and Tacoma ASC—are ASCs as defined in WAC 246-310-010 and the OR capacity of the two ASCs will be included in the capacity calculations of available ORs for the central Pierce County planning area.

To assist in its application of the numeric methodology for this project, in July 2005, the department requested utilization information from each of the 13 facilities identified above. Both hospital entities (FHS or MHS) returned completed surveys, and only two of the nine ASCs in the planning area responded.² The department notes that these survey results are very different from those returned in the most recent ASC application for this service area because during that review neither FHS nor MHS provided surgical volumes.

Application of the numeric methodology using survey responses, historical CN files, and applicable default data, indicates a surplus of 28 mixed used ORs for the central Pierce County planning area. As a result, based solely on the numeric methodology, need for additional OR capacity in the secondary health service planning area is not demonstrated. [source: department's methodology and utilization surveys]

WTSC asserts that the results of the OR need methodology are largely irrelevant to this project. WTSC notes that the department's utilization survey used to determine existing OR capacity instructs respondents to exclude cystoscopic, endoscopy, and other special procedure or dedicated labor and delivery rooms or c-section rooms. WTSC further notes that the two ORs at its facility are constructed and equipped as special procedure rooms, not outpatient surgery rooms. WTSC contends that they could not be used for any surgeries or procedures requiring general anesthesia. [source: application, p14] The department reviewed the assertions contained in the application and found WTSC's portrayal of its procedure rooms to be reasonable and consistent with the department's historical treatment of such space.

The department also reviewed the public comment received during the course of review of this application to assist in its determination. Of the comments received from existing surgical providers, no providers offered estimates of any adverse affect this project might have on their or other facilities. Comment from FHS indicated that FHS believes any CN should be conditioned upon WTSC not adding surgical capacity to its existing facility. Comment from MHS expressed concern that the term "pain management" might include procedures not appropriate for the rooms at WTSC. MHS provided a list of such procedures. The department compared MHS's list to the list of procedures WTSC provided as exhibit 6 of its screening responses and did not find any of the procedures listed by MHS on WTSC's list.

Based on the representations made by WTSC, and the department's evaluation of similar procedure rooms in other ASCs and hospitals, the department concludes that the procedure rooms at WTSC are not equivalent to the ORs used to prepare the ASC methodology and for which that

² Gig Harbor ASC and Narrows Eye Surgery Center. WTSC volumes were extracted from the application

methodology projects need, therefore the department concludes that the current ASC methodology does not provide sufficient guidance

MHS also provided comment concerning its own proposed ASC in the Central Pierce planning area, a currently-exempt ASC located in Gig Harbor for which a Certificate of Need was denied in 2005. That decision is currently under appeal by MHS. MHS further contends that, with the failure of FHS to execute Certificate of Need # 1282 for its Gig Harbor ASC, MHS has “prior right” to any ASC capacity awarded by the department in the planning area. The department declines to comment on MHS’s claim of “prior right” in this evaluation, but the department does conclude that the specialized nature of WTSC’s procedure rooms does not require the department to add them to the calculated OR capacity in the Central Pierce planning area. In its comment, MHS made no other representations about whether WTSC’s proposal was needed or how it might impact MHS or any other provider.

The applicant also noted that implementation of this project is not intended to shift any surgical cases away from existing providers. WTSC, as an existing provider, will continue with no changes in the physicians using its OR capacity. The applicant is projecting, based on historical utilization, an initial increase in procedures due to new, recently-negotiated contracts with large insurers in the area (Regence and Premera), followed by annual increases in pain management procedures of 5%. Impact upon other providers in the area is expected to be minimal. WTSC’s historical and projected volumes are outlined in Table I, below:

Table I
West Tacoma Surgery Center Utilization (Actual and Projected)

Year	Pain Management Procedures	Total Procedures
2001*	935	935
2002*	868	868
2003*	770	770
2004*	745	745
2005*	626	626
2007**	1,100	1,100
2008**	1,155	1,155
2009**	1,213	1,213

*Actual Volumes

**Projected Volumes

[source: Application, pp7 and 16]

The department recognizes that this project requires Certificate of Need review because it proposes a change in the legal structure of the existing ASC that results in the current ASC no longer meeting the CON exemption criteria. As previously stated, the ASC became operational in 1999 and continues to operate as an exempt ASC. The applicant has stated that if this project is approved, the applicant may expand access to the ASC to physicians other than Dr. Jasper, but does not currently have plans to do so. Projected utilization within the application is solely based on the facility’s own operating history and historical patient base. The department notes that the legal structure of the ASC is the only change proposed within this application, and that change requires that the project undergo CN review and approval.

During the review period, no community members or existing providers offered comment to the department about any effects (positive or negative) this project might have on current providers or the health care system in the area, other than the FHS and MHS comments discussed above. The department was similarly unable to identify potential adverse effects this project might have on current providers.

Based on the information provided in the application and the applicant's subsequent correspondence, the department concludes that WTSC would continue to provide only those types of surgical and pain management procedures it has historically provided. The department further concludes that, although the applicant's need projections indicate no need for additional ORs in the planning area, WTSC based its application on maintaining its existing scope of services and OR capacity, therefore approval of this project contingent upon WTSC agreeing to provide only those types of services described within the application and relied upon by the department in this evaluation is appropriate to ensure orderly provision of services in the planning area.

Based on the above information, the department concludes that this sub-criterion is met.

- (2) All residents of the service area, including low-income persons, racial and ethnic minorities, women, handicapped persons, and other underserved groups and the elderly are likely to have adequate access to the proposed health service or services.

A facility's admission policy provides the overall guiding principles of the facility as to the types of patients that are appropriate candidates to use the facility, and any assurances regarding access. To demonstrate compliance with this sub-criterion, the applicant provided a copy of WTSC's draft admission policy. The draft admission policy provided by the applicant in Exhibit 5 of the applicant's screening state that services will be available to all persons regardless of race, income, ethnicity, sex or handicap.

The department uses a facility's Medicaid eligibility or contracting with Medicaid as the measure to determine whether low income residents would have access to the proposed services. NeoSpine's "Charity Care and Financial Discount Policy," provided as Exhibit 8 of the application, includes references to assisting patients obtain any available sources of medical assistance, including Medicaid. In addition, WTSC's projected sources of reimbursement include Medicaid. Based on this information and the other information included in the application and charity care policy, the department concludes that low income residents would have access to the proposed services.

Similarly, the department uses a facility's Medicare certification as the measure to determine whether elderly patients would have access to the proposed services. Based on the facility's history as a Medicare-certified provider and revenue projections including compensation from Medicare, the department concludes that elderly patients would have access to the proposed services.

The department concludes that there is reasonable assurance that the proposed services will be available and accessible to all residents for whom they are appropriate, contingent upon the submission of an adopted admissions policy consistent with the draft provided during the course of review.

WAC 246-310-270(7) states that ASCs shall implement policies to assure access to individuals unable to pay consistent with charity care levels reported by the hospitals affected by the proposed ASC. According to charity care data obtained from OHPDS, the 2002-2004 average for the hospitals in the planning area is 0.85% of gross revenue and 1.80% of adjusted revenue. [source: OHPDS 2002-2004 charity care summaries]

To demonstrate compliance with this charity care criterion, NeoSpine submitted its draft charity care policy, however, the policy does not identify the percentage of charity care to be provided by the ASC. The applicant's pro formas indicate that the ASC will provide charity care at approximately 2.65% of gross revenue, and 2.81% of adjusted revenue which exceeds the average charity care for the planning area. [source: applicant's April 24, 2006 screening response, Exhibit 11]

The department concludes that any approval of this project must be conditional upon the proposed ASC providing charity care at the planning-area levels outlined above. The projected financial statements provided by the applicant display WTSC's intent to meet those levels. With this condition, this sub-criterion is met.

B. Financial Feasibility (WAC 246-310-220)

Based on the source information reviewed and subject to the terms and conditions on pages 3 and 4 of this evaluation, the department determines that the applicant has met the applicable financial feasibility criteria in WAC 246-310-220.

(1) The immediate and long-range capital and operating costs of the project can be met.

As stated in the project description portion of this evaluation, this facility was established in 1999 and the department did not require WTSC to identify the capital costs for its establishment at that time. For this project under review, WTSC identified the total capital expenditure to be \$1,050,000, which represents the estimated fair market value for NeoSpine's purchase of 50% of the business interest, plus consulting and Certificate of Need fees. [source: Application, p20] Given that WTSC would not be financing this project, the department evaluated whether NeoSpine has the funds to finance this project. That review is shown in sub-section (3) of this criterion.

To determine whether WTSC would meet its immediate and long range operating costs, the department evaluated WTSC's historical balance sheet for year (2005) and projected balance sheet for the third year of operation (2009). A summary of the balance sheets is shown in Tables II and III below and on the following page: [source: April 24, 2006, screening responses]

Table II
West Tacoma Surgery Center
Balance Sheet for Historical Year 2005

Assets		Liabilities	
Current Assets	\$ 518,493.55	Current Liabilities	\$ -31,216.30
Fixed Assets	140,082.63	Long Term Liabilities	0
Other Assets	0.01	Total Liabilities	\$ -31,216.30
Total Assets	\$ 658,576.19	Equity	689,792.49
		Total Liabilities and Equity	\$ 658,576.19

Table III
West Tacoma Surgery Center
Balance Sheet for Projected Year 2009

Assets		Liabilities	
Current Assets	\$ 312,318	Current Liabilities	\$ 40,231
Fixed Assets	138,500	Long Term Liabilities	158,000
Other Assets	0	Total Liabilities	\$ 198,231
Total Assets	\$ 450,818	Equity	252,586
		Total Liabilities and Equity	\$ 450,817

NeoSpine LLC
Balance Sheet for Historical Year 2005

Assets		Liabilities	
Current Assets	\$ 6,635,670	Current Liabilities	\$ 4,583,374
Fixed Assets	11,032,695	Long Term Liabilities	10,964,331
Other Assets	14,063,514	Total Liabilities	\$ 15,547,705
Total Assets	\$ 31,731,879	Equity	16,184,173
		Total Liabilities and Equity	\$ 31,731,878

Based on the current and projected balance sheets, it is apparent that WTSC is a financially stable ASC and can be reasonably expected to be able to meet its short and long term financial obligations.

Based on the financial information above, the department concludes that the long-term capital and operating costs of this project can be met, and this sub-criterion is satisfied.

- (2) The costs of the project, including any construction costs, will probably not result in an unreasonable impact on the costs and charges for health services.

Tables IV and V below and on the following page detail the historical, current, and projected revenues and expenses for WTSC for years 2005 and 2007 through 2009. [source: April 24, 2006, supplemental information, Attachment 8]

Table IV
West Tacoma Surgery Center Revenue and Expense Summary
Historical 2005

	Historical - 2005
# of Cases	626
Net Patient Revenue*	\$ 776,992
Total Expense	\$ 223,429
Net Profit or (Loss)	\$ 553,563
Net Revenue per Case	\$1,241.20
Total Expenses per Case	\$ 356.92
Net Profit or (Loss) per Case	\$ 884.29

*Includes deductions for bad debt and charity care

Table IVb
West Tacoma Surgery Center Revenue and Expense Summary
Adjusted for omitted expense categories
Historical 2005

	Historical - 2005
# of Cases	626
Net Patient Revenue*	\$ 776,992
Total Expense	\$ 420,730
Net Profit or (Loss)	\$ 356,262
Net Revenue per Case	\$1,241.20
Total Expenses per Case	\$ 672.09
Net Profit or (Loss) per Case	\$ 569.11

*Includes deductions for bad debt and charity care

Table V
West Tacoma Surgery Center Revenue and Expense Summary
Projected Years 2007 through 2009

	Year One (2007)	Year Two (2008)	Year Three (2009)
# of Surgeries	1,100	1,155	1,213
Net Patient Revenue*	\$ 768,009	\$ 806,409	\$ 846,730
Total Expense	\$ 442,418	\$ 457,219	\$ 469,869
Net Profit or (Loss)	\$ 325,591	\$ 349,190	\$ 376,861
Net Revenue per Case	\$ 698.19	\$ 698.19	\$ 698.05
Total Expenses per Case	\$ 402.20	\$ 395.86	\$ 387.36
Net Profit or (Loss) per Case	\$ 295.99	\$ 302.33	\$ 310.69

*Includes deductions for bad debt and charity care

Staff examined the income statements provided by WTSC for calendar years 2003 through 2005. In that examination, the department noted that several expense items included on the 2003 and 2004 income statements were not included on the 2005 income statement. Those items include salaries, benefits, medical director fees, and management fees. When these items are added to the 2005 income statement figures, the facility's total expenses, while increased, are consistent with the total expenses for 2003 and 2004, as are the expenses and net income per surgery. This revised 2005 income statement is reflected in Table IVb, above.

Staff compared the projected costs and charges in Tables IV and V to the costs and charges identified in similar recent projects. That comparison reveals that the costs and charges identified above are different from other recent ASC projects reviewed by the project, but the department also notes that the scope of services provided by the applicant is narrower and more specialized than many other ASCs. The department concludes that these costs and charges are appropriate.

WTSC was established as an exempt ASC in 1999 and given that this project requests CN approval based on a restructure of the ownership of the ASC, the only capital costs incurred are those to be

incurred by NeoSpine for its purchase of 50% of the business interest of the ASC. No construction is required or anticipated for the existing ASC.

Based on the information provided above, the department concludes that the cost of the project will not result in an unreasonable impact on the costs and charges for health services within the service area. This sub-criterion is met.

(3) The project can be appropriately financed.

As stated in the project description portion of this evaluation, the total capital expenditure associated with this project is \$1,050,000. This amount represents the fair market value for NeoSpine's purchase of 50% of the business interest, plus consulting and CN fees. [source: Application, p20] To demonstrate compliance with this sub-criterion, NeoSpine provided the following documentation. [source: Application, Exhibits 9 and 10; November 1, 2004 and April 19, 2006, supplemental information and attachments]

- A signed letter from Mr. David Cheek, Vice President of Finance for NeoSpine, stating a commitment to the financial portion of the project. This letter also identifies commitments from a group of investors including Wachovia Capital Partners and Noro-Mosely Partners for funding of approximately \$5.0 million.
- A copy of the draft Asset Purchase Agreement, which identifies all costs associated with NeoSpine's portion of the asset purchase; and
- Audited financial statements/reports for NeoSpine, LLC, for 2003 and 2004
- Unaudited financial statements/reports for NeoSpine, LLC, for 2005.

Based on this information, the department concludes that the proposed financing by NeoSpine is appropriate and NeoSpine has the funds available to finance this project. With the condition that the applicant agrees to provide executed agreements for all of the draft agreements provided above, then the department would conclude that this sub-criterion is met.

C. Structure and Process (Quality) of Care (WAC 246-310-230)

Based on the source information reviewed and subject to the terms and conditions on pages 3 and 4 of this evaluation, the department determines that the applicant has met the applicable structure and process (quality) of care criteria in WAC 246-310-230.

(1) A sufficient supply of qualified staff for the project, including both health personnel and management personnel, are available or can be recruited.

Given that the ASC is currently operating, the applicant does not propose any increase in staff if this project is approved. Table VI on the following page shows the current and projected staffing of the ASC. [source: application, p21]

Table VI
West Tacoma Surgery Center - Current and Projected Staffing

Staff	Current	2009 Projected	Increase	Total FTEs
RN's	1	1	0	1
Operating Room Technician	.8	.8	0	.8
Scheduling	.3	.3	0	.3
Registrar	.3	.3	0	.3
Administrative/Other	.6	.6	0	.6
Total FTEs	3.0	3.0	0	3.0

The applicant states that all employees of the existing ASC will be continue to be employed by WTSC. Any vacancies created will be filled via advertising. [source: Application, p24]

It is a reasonable assumption that many, if not all, of the current staff of the ASC will remain employed by the ASC after the change in ownership. The department concludes that it is reasonable and prudent for the applicant to transfer current staff to the ASC to ensure adequate staffing for the ASC. The department further concludes that the applicant's contention that "From nearly every perspective, the change in ownership is 'invisible'..." is reasonable and significant staff turnover is unlikely. [source: Application, p24]

Based on the above evaluation, the department concludes that this sub-criterion is met.

- (2) The proposed service(s) will have an appropriate relationship, including organizational relationship, to ancillary and support services, and ancillary and support services will be sufficient to support any health services included in the proposed project.

To demonstrate compliance with this sub-criterion, NeoSpine provided the agreements listed on the following page. [sources: indicated below]

- Draft Charity Care Policy [Application, Exhibit 8]
- Draft Admission Policies and Procedures [Applicant's April 24, 2006, Screening Responses, Attachment 5]
- Draft Asset Purchase Agreement [Applicant's April 24, 2006, Screening Responses, Attachment 12]
- Executed Management Agreement [Applicant's April 24, 2006, Screening Responses, Attachment 13]
- Executed Lease Agreement for the site [Application, Exhibit 4]
- Executed Transfer Agreement [Application, Exhibit 12]

After reviewing the draft documents above, the department concludes that the applicant demonstrated intent for the ASC to have appropriate relationships with ancillary and support services for the health care services to be provided. Additionally, the applicant intends to meet all of the necessary documentation required for the operation and management of the ASC. However, given that the documents are drafts, any approval should be conditional upon the applicant agreeing to provide final or executed documents to the department prior to commencement of the project. With these terms, this sub-criterion would be met.

- (3) There is reasonable assurance that the project will be in conformance with applicable state licensing requirements and, if the applicant is or plans to be certified under the Medicaid or Medicare program, with the applicable conditions of participation related to those programs.

NeoSpine operates one other ASC in Washington, South Sound Neurosurgery Center, dba Microsurgical Spine Center. Since 2002, the Department of Health's Office of Health Care Survey (OHCS), which surveys ASCs within Washington State, has completed one compliance survey for that facility. The survey revealed a non-compliance issue related to facility construction and fire control. The standard found out of compliance by OHCS surveyors was based on a 1985 code. By the standards contained in a revised code issued in 2000, but not adopted by Medicare as of 2002, the facility was in compliance. The ASC sought, and was granted, a waiver from this requirement. No other issues were identified in the agency's survey. [source: compliance survey data provided by Office of Health Care Survey]

In addition, at the time of application, NeoSpine owned or operated five ASCs in Colorado, Maryland, Tennessee, and South Carolina. To evaluate the quality of care for NeoSpine, the department requested a quality of care histories from the health care survey agencies in those states. All surveys conducted indicate that NeoSpine has been in substantial compliance with each state's state and federal guidelines for healthcare facilities. [source: compliance survey data]

The current owner (and sole anticipated member of the medical staff if this project is approved) of the facility is Dr. Joseph F. Jasper. A review of Dr. Jasper's compliance history with Department of Health's Medical Quality Assurance Commission reveals no recorded sanctions [source: compliance history provided by Medical Quality Assurance Commission]

Given the compliance history of the other operational health care facility owned and/or operated by NeoSpine, and the compliance history of the physician associated with the ASC, there is reasonable assurance that WTSC would continue to operate in conformance with applicable state and federal licensing and certification requirements. This sub-criterion is met.

- (4) The proposed project will promote continuity in the provision of health care, not result in an unwarranted fragmentation of services, and have an appropriate relationship to the service area's existing health care system.

As noted earlier in this evaluation, the existing ASC is already operating as an exempt ASC. While approval of this project would open the facility to other physicians wishing access to it, the applicant projects that utilization of the facility will continue to be limited to the pain management procedures such as those currently provided at WTSC. As a result, no fragmentation of services is projected as a result of this project.

Based on the above information, the department concludes that there is reasonable assurance that this project would promote continuity of care. Further, the department concludes that WTSC's current relationships within the existing health care system would continue and not result in an unwarranted fragmentation of services.

- (5) There is reasonable assurance that the services to be provided through the proposed project will be provided in a manner that ensures safe and adequate care to the public to be served and in accord with applicable federal and state laws, rules, and regulations.

This sub-criterion is addressed in sub-section (3) above, and is met.

D. Cost Containment (WAC 246-310-240)

Based on the source information reviewed and subject to the terms and conditions on pages 3 and 4 of this evaluation, the department determines that the applicant has met the applicable cost containment criteria in WAC 246-310-240.

- (1) Superior alternatives, in terms of cost, efficiency, or effectiveness, are not available or practicable.
In response to this sub-criterion, the applicant provided the following statements. [source: Application, p26]

“This project is subject to review simply because of the proposed change of ownership structure of an existing exempt surgery center. Hence, issues such as where to locate the facility, when to open and how to staff were not relevant to this project.”

WTSC continues:

“In terms of the structure, several models were explored between NeoSpine Surgery and WTSC. These models included lease of assets (as opposed to acquisition) and out right acquisition (100% of the assets). Any other model would have been a violation of Stark and anti-trust regulations. In the end, NeoSpine Tacoma and West Tacoma Surgery Center settled on a model that ensured continued access, best met the needs and desires of the parties involved and conformed with all state and federal rules and regulations. The selected option, the purchase of 50% of the assets of West Tacoma Surgery Center, ensures the continued operation of a quality entity with the known and respected physician owner maintaining ownership of the Center.”

The department concurs that if WTSC had continued to operate status quo, a CN application would not be necessary. However, given the business decision by WTSC to partner with NeoSpine, the project becomes an ASC as defined in CN rules.

While other alternatives to this project may also be considered available and/or practicable, the department concludes that the applicant chose the best available option by selling 50% ownership of the ASC to NeoSpine and transferring “...much of the operational responsibility from the existing owner to NeoSpine Management Surgery³, LLC, resulting in increased efficiency and productivity.” [source: application, p24] Further, it is clear from the financial information provided in the application related to NeoSpine, that NeoSpine has access to the capital for continued operation of the ASC.

Based on the information provided above, the department concludes that this project is consistent with this sub-criterion.

³ Although page 26 of the application read “NeoSpine Management Surgery, LLC,” the applicant’s May 4, 2006, responses to supplemental screening questions indicated that this passage should have read “NeoSpine Management *Services* (emphasis added), LLC,